

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 PERCY LAVAE BACON,

Case No.2:18-cv-02390-APG-PAL

4 Plaintiff,

ORDER

5 v.

6 ROBERT BRUCE BANNISTER et al.,

7 Defendants.

8 **I. DISCUSSION**

9 Plaintiff Percy Bacon is a prisoner proceeding *pro se*. Bacon has submitted a civil rights
10 complaint, an application to proceed *in forma pauperis*, and a motion for appointment of
11 counsel. ECF Nos. 1, 1-1, 2. However, on at least three occasions, this court and the Ninth
12 Circuit Court of Appeals have dismissed civil actions commenced by Bacon while in detention
13 as frivolous or for failure to state a claim upon which any relief may be granted.¹

14 If a “prisoner has, on 3 or more prior occasions, while incarcerated or detained in any
15 facility, brought an action or appeal in a court of the United States that was dismissed on the
16 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,”
17 he may not proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in
18 advance unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

19 Bacon submitted his complaint on December 17, 2018. ECF No. 1-1. Bacon sues various
20 prison officials for Eighth Amendment deliberate indifference to serious medical needs for

21
22 ¹ See *Bacon v. Laswell*, 2:09-cv-02058-RFB-PAL (district court dismissed case for failure to
23 state a claim and appellate court dismissed appeal as frivolous); *Bacon v. State of Nevada*, 2:10-
cv-01451-KJD-LRL (appellate court dismissed appeal as frivolous). I take judicial notice of the
prior records in these matters.

1 prescribing a medication that caused him to develop male mammary glands. *See generally* ECF
2 No. 1-1. Bacon does not specify any dates except for the years 2016, 2017, and 2018. These
3 allegations fail to plausibly allege that Bacon is in imminent danger of serious physical injury.
4 *See Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007) (holding that the exception to
5 § 1915(g) applies if the complaint makes a plausible allegation that the prisoner faced an
6 ongoing danger of serious physical injury at the time of filing). As such, Bacon must pre-pay the
7 \$400.00 filing fee in full.

8 **II. CONCLUSION**

9 For the foregoing reasons, it is ordered that Bacon's application to proceed *in forma*
10 *pauperis* **(ECF No. 1) is denied.**

11 It is further ordered that this action will be dismissed without prejudice unless Bacon
12 pays the \$400.00 filing fee in full within 30 days of entry of this order.

13 It is further ordered that the Clerk of the Court shall send Bacon two copies of this order.
14 Bacon shall make the necessary arrangements to have one copy of this order attached to the
15 check paying the filing fee.

16 It is further ordered that the Clerk of the Court shall retain the complaint (ECF No. 1-1).

17 It is further ordered that the motion for appointment of counsel **(ECF No. 2) is denied,**
18 without prejudice, at this time.

19 Dated: December 21, 2018.

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21 _____
22 UNITED STATES DISTRICT JUDGE
23